

人民监督员制度法律化问题研究

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人民监督员制度法律化问题研究

Research Legalization of the People's Procuratorate  
Supervisor System

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## 内 容 提 要

2004年10月,人民监督员制度在先期试点工作的基础上向全国检察系统推广,所有试点单位在办理职务犯罪案件中拟撤销案件、拟作不起诉或者犯罪嫌疑人不服逮捕决定的,启动人民监督员监督程序,人民监督员在对案件评议后独立作出表决意见。作为检察机关的一项机制创新,该制度取得了一定成效。至少它有助于检察机关在执法中发现和纠正问题,同时也有利于检察机关提高办案质量,促进司法公正。

该制度是为解决检察权监督问题的一项积极尝试。众所周知,一切权力必须接受监督和制约,否则将导致权力的滥用。在中国,检察院具有双重职能:国家法律监督机关和职务犯罪侦查机关。检察机关在办理职务案件中具有侦查权、决定逮捕权、起诉权和监督权,而必要的、有效的外部监督欠缺。缺乏有效的监督,检察权很可能产生权力的滥用甚至导致腐败。在中国审前程序缺少司法审查和令状主义的情况下,需要解决这样一个问题:“谁来监督国家法律监督者”。

人民监督员制度具有法理基础,如《中华人民共和国宪法》第四十一条规定,任何公民都有权对国家机关及其工作人员的工作进行监督、批评和提出建议。此外,《人民检察院组织法》第七条和《刑事诉讼法》第六条明确规定,人民检察院在工作中必须坚持实事求是,贯彻执行群众路线。因此,人民监督员制度体现了群众路线的法律方针。

人民监督员对检察机关的监督不同于党委监督、全国人大对权力的法律监督,也不同于中国人民政治协商会议的民主监督和新闻舆论监督以及人民群众监督。人民监督员制度是在检察系统和刑事诉讼程序外部的一种社会监督、民主监督。因此,人民监督员的监督意见和建议仅是对检察机关的一种提醒,不具有法律上的义务性。

因其社会性和平民性,它不可能一劳永逸地解决司法权包括检察权在内的监督制约问题。虽然如此,它还是法律监督的有益补充。该制度是检察机关在司法改革上的大胆尝试,其坚决态度和主动精神值得社会的进一步支持,然而它还不适应现代宪政体制对权力监督的需要,其作用有限。因而,人民监督员监督存在

的问题必须纳入中国司法体制的进一步改革中，比如，依托人民监督员制度实现审前程序诉讼化，刑事诉讼权利宪法化、人民监督员监督与人大监督的统一化，等等。

笔者有幸见证并参与实行人民监督员制度这一大业，不揣浅陋，加以探讨。本文共四章：第一章人民监督员制度概述；第二章人民监督员制度的正当性分析；第三章当前人民监督员制度运行中存在的问题；第四章人民监督员制度法律化发展方向。

**关 键 词：**职务犯罪；人民监督员；权力制约

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## ABSTRACT

In October, 2004, the people's supervisor system (hereinafter called the System) was expanded to procuratorial organs nationwide based on the experience of pilot schemes. All the experimental units initiated the supervisory procedure in cases involving job-related crimes if they planned to withdraw or decided not to prosecute a case or if a criminal suspect defied with the decision of procuratorial arrest. People's supervisors would raise their opinions after discussing and reviewing the case in question independently. As the systematic renovation of the procuratorate organs, the System has obtained some achievements. At least, it could help the procuratorates find out and correct the problems in their law enforcement, as well as improve the quality of handling cases and promote judicial justice.

The System is a positive attempt in solving the supervision over the procuratorial power. It is well-known that all powers should be supervised and restricted, or it will lead to abuse of powers. In China, the procuratorate has dual functions: the state organ for both legal supervision and the investigation of job-related crimes. When the procuratorate deals with job-related cases, it has the power of investigation, decision of arrest and prosecution and supervision, lacking necessary and effective supervision from the outside. Without effective supervision, the procuratorial power is quite likely to lead to abuse of power and even corruption. In defect of judicial review and warrant doctrine before the trial in China, it requires the solution to the problem "who is going to supervise the state supervisor".

The System has its legal foundation. For example, Article 41 of the Constitution of the People's Republic of China provides that a citizen has the right to supervise, criticize and give advice on the work of the state organs and state functionaries. In addition, Article 7 of the Organic Law of the People's Procuratorates and Article 6 of the Criminal Procedure Law expressly state that the procuratorates must be practical and realistic and insist on the implementation of the mass line in its work. Therefore, the System incarnates the requirement of the mass line policy of the law.

The supervision of people's supervisors over the procuratorates is different from the supervision of the Party Committee, legal supervision of the NPC over powers,

## ABSTRACT

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democratic supervision of the Chinese People's Political Consultative Conference and supervision of mass media and the mass. The System is a social and democratic supervision outside the procuratorial system and the criminal procedure. Since the opinion and recommendation of people's supervisors serve as a reminder to the procuratorial organs, it does not have the compulsory nature in law.

Given its social and democratic nature, it can not absolutely solve the problem of legal supervision and restriction on judicial powers, including the procuratorate. However, it can be a useful supplement to legal supervision. The System is a daring attempt of procuratorial organs in the judicial reform. Its purpose and positive attitude deserve further support of the society. However, the System can not meet the demand of supervision over powers in a modern constitutional system and thus its role is limited, so the problems on the supervision of people's supervisors must bring in further reforms of judicial system in China, for instance, standardization of pretrial procedure relying on the people's supervisor system; constitutionalization of basic procedural rights; unification of the supervision of people's supervisors with the supervision of the NPC; etc.

Lucky to witness and participate in the development of this great cause, the author ventures to explore it at the risk of showing his ignorance. This paper comprises four chapters, Chapter 1 is the Summary of the People's Supervisor System; Chapter 2 is Justification analysis of the People's Supervisor System; Chapter 3 is on Existing Problems in operation of the People's Supervisor System; Chapter 4 is the Development of the People's Supervisor System on a legal basis.

**Key words:** Job-related crimes; People's supervisor;  
Balance and check of powers



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## 前 言

我国宪法把检察机关定位为“法律监督机关”，把检察权作为与行政权和审判权并列的一种独立权力来设置，即在人民代表大会之下的“一府两院”的权力监督制约体制。检察院在办理刑事案件中与公安、法院分工负责，互相配合，互相制约，行使对职务犯罪进行立案侦查的权力；对刑事案件提起公诉的权力；对刑事诉讼进行监督的权力。检察机关集侦查权、公诉权、法律监督权于一身，人们似乎不放心。任何权力都必须在相互制约和民主监督的机制中运行，否则将导致滥用和腐败。在权力面临着自身如何面对不信任的问题上，检察权也同样面临着如何被监督的问题——如何有效规制其职务犯罪侦查权呢？

中国检察机关实际上处于两难境地：一方面，检察权在行使中因监督制约而缺乏独立性保障；另一方面，检察权又因监督制约的失调而难以获得社会的认同和信赖。为了扭转这一局面，高检院开始注重在“独立行使检察权”与“自觉接受监督”之间寻找平衡点，着手职务犯罪侦查权监督制约机制的构建，并成为检察改革的重要内容之一。2005年9月，高检院明确提出，今后三年检察改革的主要任务之一是“完善检察机关接受监督和内部制约的制度，保障检察权的正确行使”。客观来说，多年来，检察机关在加大办案力度的同时，也在不断强化内外监督制约的机制。但是，由于刑事诉讼过程中各种利益冲突与矛盾的纠结，传统诉讼结构设计的失衡，长期以来人们对诉讼程序认识的偏差和不足等原因，导致社会对检察权既寄予厚望又十分警惕，一方面希望检察机关在守护法律、维护正义上发挥作用，另一方面又谨防检察权不当行使和滥用。一些人在检察院的免予起诉权、部分自侦权因刑事诉讼法的修改而失去后，又进一步对检察机关民事行政检察权、自侦权、逮捕权甚至是侦查监督权提出质疑。面对查办职务犯罪中存在的问题和外界的种种非议，高检院原检察长贾春旺于2003年8月29日在“人民监督员试点工作会议”上指出：我们必须正视查办职务犯罪工作中存在的问题，认真回答“谁来监督检察机关”的问题，而且要用实际行动和实际效果来回答！以这次会议的召开为标志，一种崭新的检察机关接受外部监督的制度——人民监督



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